



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201130008**
Release Date: 7/29/2011
Date: May 3, 2011

Contact Person:
Identification Number:
Telephone Number:

Employer Identification Number:

Uniform Issue List:

4941.00-00
4946.01-00
4941.04-00

Legend:

A=
B=
C=
D=
E=

Dear _____ :

This is in response to your request for a ruling dated March 29, 2010 under section 4941 of the Internal Revenue Code ("Code").

You are exempt under section 501(a) of the Code as an organization described in section 501(c)(3) and are classified as a private foundation under 509(a).

Your Trust Agreement provides that you were formed to make distributions to organizations described in sections 2055(a), 2522(a), 170(c)(1) or 170(c)(2) of the Code or for such religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, within the meaning of section 501(c)(3).

A, B and C served as your original trustees. A and B are married. C resigned as trustee in 1993. On March 23, 1995, A and B appointed D as trustee. A and B resigned as trustees on April 23, 2008. D and E serve as your current trustees. E is A's distant cousin.

You represent that under pertinent state law neither A nor B is considered to be a grantor or creator with respect to you. Further, you represent that A and B were disqualified persons with respect to you solely due to their status as your trustees.

You represent that the fair market value of your assets on February 1, 2010, was approximately \$9.6 million, consisting of \$3.6 million in securities and cash and certain real property consisting of land and a residential home (hereinafter collectively referred to as "House 1") which you represent has a fair market value of \$6 million.

A is the owner in fee simple of certain real property consisting of land, a residential home, garage and appurtenant buildings (hereinafter collectively referred to as "House 2") which you represent has a fair market value of \$10 million.

Initially, A, B and D considered using House 1 to house a museum and study center; however, they determined that House 1 would not be suitable.

In the fall of 2009 D and E entered into discussions with A to exchange House 1 for House 2. As a result A would become the owner in fee simple of House 1 and you will hold fee simple title to House 2.

A currently owns a three acre tract of property adjacent to House 1. You represent that if A becomes the owner of House 1, the value of that tract of property will increase by \$500,000.

Subsequent to the completion of the exchange of House 1 for House 2, you plan to operate the museum and study center. You represent that these operations will be consistent with your exempt purpose.

You represent that all aspects of the proposed exchange of House 1 for House 2 occurred after A and B resigned as trustees and there were no discussions of the exchange while they were serving as trustees.

You represent that the costs related to the exchange of House 1 for House 2, such as title fees, recording expenses and other settlement expenses will be reasonably allocated between A and you.

Ruling Requested:

The self-dealing rules under section 4941(a) of the Code are inapplicable to the exchange of real property between A and you because A, in her own right or by her marriage to B, is not a disqualified person.

Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (the "regulations") provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Section 507(d)(2) of the Code defines the term "substantial contributor" as any person who contributed or bequeathed an aggregate amount of more than \$5000 to a private foundation, if such amount is more than 2 percent of the total contributions and bequests received by a foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

Section 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization that is described in section 501(c)(3) other than organizations described in section 509(a)(1) through 509(a)(4).

Section 4941(a) of the Code imposes excise taxes on any act of self-dealing between a private foundation and a disqualified persons as defined in section 4946(a)(1). Generally, transactions described in section 4941(d)(1) constitute acts of self-dealing unless an exception is provided in section 4941(d)(2).

Section 4941(d)(1) of the Code provides that the term "self-dealing" means certain direct and indirect transactions between a private foundation and a disqualified person. Self-dealing includes any of the following transactions between a private foundation and a disqualified person: (A) any sale or exchange or leasing of property; (B) any lending of money or extension of credit; (C) the furnishing of goods, services or facilities; (D) the payment of compensation, or the payment or reimbursement of expenses by a private foundation to a disqualified person; (E) the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; or (F) certain payments to government officials.

Section 4946(a)(1) of the Code provides that the term "disqualified person" with respect to a private foundation means a person who is:

- (A) a substantial contributor to the foundation,
- (B) a foundation manager,

- (C) an owner of more than 20 percent of (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise which is a substantial contributor to the foundation,
- (D) a member of the family of any individual described in subparagraphs (A), (B), or (C),
- (E) a corporation of which persons described in subparagraphs (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,
- (F) a partnership in which persons described in subparagraphs (A), (B), (C), or (D) own more than 35 percent of the profits interest, or
- (G) a trust or estate in which persons described in subparagraphs (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

Section 4946(d) of the Code provides that for purposes of section 4946(a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 53.4941(d)-1(a) of the Foundation and Similar Excise Regulations ("foundation regulations") provides that for purposes of section 4941 of the Code, the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2 of the foundation regulations. For purposes of this section, it is immaterial whether the transaction results in a benefit or a detriment to the private foundation. The term "self-dealing" does not, however, include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction. For example, the bargain sale of property to a private foundation is not a direct act of self-dealing if the seller becomes a disqualified person only by reason of his becoming a substantial contributor as a result of the bargain element of the sale.

Rev. Rul. 76-448, 1976-2 C.B. 368, held that an act of self-dealing will not result from the exchange of securities between a private foundation and a corporation that was previously a disqualified person by reason of the ownership of more than 35 percent of its total combined voting power by the former foundation manager, who resigned 5 years prior to the exchange, and who did not participate in planning the exchange offer during the period of disqualification.

Analysis:

The term "self-dealing", as defined in section 4941(d)(1)(A) of the Code, includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

You plan to exchange the property you own, House 1, for the property owned by A, House 2. You represent that the proposed exchange of houses will further your charitable purposes. It will allow you to operate a museum and a study center.

A and B served as two of your three initial trustees. Thus, they were disqualified persons with respect to you since they served as foundation managers. Further, A was a disqualified person with respect to you since she is the spouse of B. On April 23, 2008, both A and B resigned as

trustees. You represent that A and B were not disqualified persons with respect to you in any other capacity.

Section 4946(a)(1)(B) of the Code provides that the definition of "disqualified person" includes a foundation manager.

As a general rule, a foundation manager ceases to be a disqualified person once he or she resigns the position with the foundation. That result is consistent with a Congressional intent to "disqualify" those persons presumed able to exert a significant influence over the conduct of the foundation. A foundation manager cannot be presumed able to exert that influence after he or she resigns. See Rev. Rul. 76-448, *supra*, which held that an act of self-dealing will not result from the exchange of securities between a private foundation and a corporation that was previously a disqualified person.

Thus, A and B's status as disqualified persons arising from their positions as your foundation managers ceased when they resigned as trustees on April 23, 2008.

Section 4946(a)(1)(D) of the Code provides that the definition of "disqualified person" includes a member of the family of any individual described in subparagraphs (A), (B), or (C).

A's status as a disqualified person arising from her relationship with B ceased when B resigned as your trustee on April 23, 2008.

A and B are no longer disqualified persons with respect to you. You represent that A and B resigned from their positions as your trustees prior to the decision to exchange House 1 for House 2. Further, you represent that there were no discussions regarding the plan to exchange House 1 for House 2 while they served as trustees. Thus, it cannot be presumed that A and B exerted a significant influence with respect to the exchange of houses.

Section 4946(a)(1)(A) of the Code defines term "disqualified person" as a person who is a substantial contributor to the foundation. Although A is no longer a disqualified person with respect to you, as a result of the exchange of House 1 for House 2, A may become a substantial contributor with respect to you. However, section 53.4941(d)-1(a) of the foundation regulations provides that, for purposes of section 4941 of the Code, the term "self-dealing" does not include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction.

Ruling:

The self-dealing rules under section 4941(a) of the Code are inapplicable to the exchange of real property between A and you because A, in her own right or by her marriage to B, is not a disqualified person.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative. A copy of this letter should be kept in its permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

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